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International Covenant on Civil and Political Rights

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Human Rights Committee
Ninety-eighth session

Summary record of the 2687th meeting
Held at Headquarters, New York, on Tuesday, 9 March 2010, at 10 a.m.

Chair: Mr. Iwasawa

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10-26433 (E)

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The meeting was called to order at 10:12 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of Mexico (*continued*) (CCPR/C/MEX/5)

1. *At the invitation of the Chair, the members of the delegation of Mexico took places at the Committee table.*

2. **The Chair** invited the members of the delegation of Mexico to reply to the oral questions posed by Committee members at the previous meeting.

3. **Mr. Mercado Casillas** (Mexico) said that the Government had recently initiated a programme in Ciudad Juárez to include all federal ministries in an intervention plan to tackle the root causes of the violence and rebuild the city's social fabric. The plan focused on the most vulnerable zones, and citizen participation in its design, implementation, and follow-up was a key aspect of it. It addressed five points, namely, poverty and vulnerability, health, education, creation and recovery of spaces, and opportunities for economic development and employment.

4. The federal Government was committed to improving legal standards to ensure the recognition of women's right to a life free of violence, to guarantee its exercise, and to establish institutional mechanisms to punish violence and prevent its recurrence. It was a sweeping process aimed at strengthening and consolidating the current system by introducing reforms at every level, including in civil and criminal legislation. The Government was implementing proposals on eliminating discriminatory legislation and amending criminal legislation that impeded women's access to justice.

5. **Mr. Navarrete Gutiérrez** (Mexico) said that while the Mexican Government unequivocally condemned violence against women, guaranteeing them a life free of violence was a major challenge. The legislative framework was not yet sufficient to eliminate misogyny. Still, the Government had made efforts to strengthen public policies to change the structural causes of violence. Despite the economic crisis, it had earmarked historic levels of funding, which was reviewed on a quarterly basis, to combat discrimination against women. The establishment of gender units in 12 federal ministries demonstrated that gender equity was a cross-cutting concern. All 31 federative entities had mechanisms in place for the advancement of women and were given federal financial and other support for that purpose. Approximately 900 municipal bodies had been created to deal with gender issues at the local level and a number of initiatives had been established by the judiciary to promote gender equity. Bodies including the Supreme Court of Justice and the Electoral Tribunal had created gender units to train judicial personnel in gender and human rights. While the process was slow, more than 10,500 personnel had been trained since 2007. The Ministry of National Defence had incorporated the gender perspective into the recruitment process for all posts. Gender and human rights subjects had been included in the education curriculum and the salary gap had been eliminated in the military, allowing more women access to mid- and high-level command posts. Women could now attend the exclusive naval military engineering school. The Ministry of National Defence and the Ministry of Naval Affairs had recently published their gender equity programmes.

6. While the law against violence was imperfect, it had taken but two years to implement. Some states were in the process of aligning their legislation with federal law and international treaties. Chihuahua and Chiapas had recently amended legislation in order to provide for the establishment of follow-up mechanisms to the federal gender alert system, which was operational throughout Mexican territory, even in states that did not include it in their legislation.

7. Turning to the issue of the right to life, he said that 18 state constitutions had been reformed to guarantee the right to life; 10 of those states continued to prohibit abortion. Only four states had amended their criminal legislation as a result of the federal constitutional reforms. Local legislative reform did not exempt states from compliance with international treaties or with the standards of national oversight mechanisms, as noted by the Supreme Court of Justice in respect of abortion reform in the Federal District. It was no easy task to apply Official National Standard No. 46 on domestic violence throughout the country and eliminate discrepancies between state legislation and the provisions of the Constitution and/or international human rights treaties. Nevertheless, the Government was committed to promoting the rights of

women, in particular their reproductive and sexual rights, and to ensuring their full exercise.

8. **Mr. Fernández del Castillo** (Mexico) said that jurisdiction over health care had been transferred to states in 1996 when health-care services were decentralized. Although the Ministry of Health had established procedures on how to apply health-care legislation, in particular in respect of services to victims of rape, local authorities were free to implement national recommendations as they saw fit.

9. **Mr. Ballados Villagómez** (Mexico) said that the Electoral Tribunal had resolved a number of cases involving women's participation in political life. Regulations to ensure access to political posts had been clarified. A critical review of one case by independent academics was available to the Committee. More women were filing complaints at the federal level; over 50 per cent of the cases heard by the Electoral Tribunal in 2009 had been brought by women. The delegation had provided a list of more than 200 cases in which the Electoral Tribunal had invoked the Covenant during sentencing, and those sentences had been fully disclosed to the Organization of American States and the Inter-American Institute of Human Rights. The Electoral Tribunal had consistently given priority to all interpretations favouring equality of access to electoral rights and the justice system, and had appealed in favour of such cases though current electoral norms did not provide for that. Advances made in guaranteeing the electoral rights of the indigenous population were detailed in the section of the report on article 26 of the Covenant regarding equality before the law and non-discrimination (CCPR/C/MEX/5, paras. 954 to 957).

10. **Mr. Durán Ortegón** (Mexico) said that the Government was working to empower indigenous women to exercise their rights. To that end, it had launched a productive organization programme that included training in human rights, the gender perspective, multicultural issues, and sustainability; 70 per cent of the indigenous women participating in the programme had reported a decrease in discrimination as a result of it. Two thirds of the participants had stated that their income had increased and there was evidence that their participation in the family and the community had also increased. More than 1,000 workshops had been carried out to strengthen gender equity, benefiting more than 40,000 indigenous women. It was clear that guaranteeing indigenous rights went hand in hand with effectively combating poverty and marginalization.

11. **Ms. Heredia Rubio** (Mexico) said that despite major achievements in respect of women's political participation, much remained to be done. Constitutional reform had guaranteed electoral rights for all citizens and required political parties to ensure that women accounted for at least 40 per cent of their candidate lists for Congress. Approximately 28 per cent of the members of the Chamber of Deputies were women, up from 17 per cent in 2000. The Electoral Tribunal could prosecute cases of non-application of electoral laws and citizens could file complaints with the Electoral Tribunal to protect their political rights. In December 2009, the executive branch had submitted a proposal to continue expanding and strengthening the political participation of all citizens, and other political entities had submitted important proposals in that connection. At least three initiatives slated for discussion in the Senate clearly sought to expand political participation by prohibiting consecutive re-election of legislators, encouraging direct citizen initiatives and allowing independent candidates to run for office.

12. **Mr. Guevara Bermúdez** (Mexico) said that the amendment to article 33 of the Constitution confirmed that the final decision on expulsion of aliens rested with the executive branch, which also oversaw the administrative process in respect of the place and duration of detention. Owing to the complexity of the legislative process in Mexico, it was not possible to give a timeline for the completion of constitutional reform, though the Senate was committed to a quick review. The terminology "instruments for their protection" (written reply to question 1 on the list of issues) was intended to distinguish protection of human rights from other legal protection mechanisms. The Government was cooperating with a number of United Nations bodies and was considering the jurisdiction of the Committee on Enforced Disappearances. While compliance was indeed complex, the Government was committed to full compliance with the *Campo Algodonero* and other sentences of the Inter-American Court of Human Rights. Court decisions had been published in print and on the Internet. The amendment of article 215 of the Federal Penal Code in order to bring it into line with international treaties was one example of the Government's commitment to adopt legislation in response to all Inter-American Court

decisions. Nationwide efforts were under way to harmonize investigation methods with the Minnesota Protocol, and with the Alba Protocol developed to deal with the situation in Ciudad Juárez. In addition, the Office of the Attorney General was creating a DNA database of missing persons.

13. Progress achieved by the federative entities in the field of human rights was uneven but cooperation was being promoted at all levels. Agreements signed by federal and local governments had resulted in human rights studies, human rights programmes in the federative entities, human rights training for security personnel, and the promotion of human rights nationwide. Coordination mechanisms among government bodies facilitated follow-up to reports and recommendations of international bodies, including those of the Inter-American Court of Human Rights and the Human Rights Committee. The Government was working to strengthen relevant mechanisms to expedite local investigations while avoiding irreparable damage to individual rights.

14. Mexico recognized the role of non-governmental organizations (NGOs) and human rights defenders in the promotion and defence of human rights. The National Human Rights Programme 2008-2012 included measures to protect them from violence. The Government had accepted most recommendations of the Universal Periodic Review and of the Human Rights Council, including those related to human rights defenders. A draft plan of action had been written to promote and protect the rights of human rights defenders and to establish and strengthen measures to comply with the recommendations of the Universal Periodic Review. The plan of action encouraged state governments to publish international legal instruments relating to the work of human rights defenders and established and promoted mechanisms for the protection of journalists and human rights defenders. It also included measures to investigate harassment, threats and other crimes against human rights defenders.

15. **Mr. Alcántara Martínez** (Mexico) said that the Supreme Court of Justice recognized all international human rights treaties ratified by the State. Its recent decision did not affect the precedence of international treaties in the legal hierarchy. That decision was public information and was available on the Internet.

16. **Mr. Guevara Bermúdez** (Mexico) said that the National Council for the Prevention of Discrimination had reviewed 3,184 cases of alleged acts of discrimination, 1,790 of which involved federal public servants and 3,024 of which had been resolved. Administrative measures had been taken to offer awareness, counselling and training workshops for private companies and federal bodies. All gender-based discrimination, including on grounds of gender orientation and sexual preference, was prohibited by the Constitution. Programmes to promote acceptance of sexual preferences and gender identity, and health-care laws were under review in order to increase access to health care by transsexual and transgender individuals. The National Human Rights Programme 2008-2012 established the obligation to consider transsexual and transgender individuals as legal persons and to implement affirmative action programmes to guarantee access of marginalized gender communities to the workplace. A proposal by the Commission on Government Policy on Human Rights to designate 17 May as the national day to combat homophobia was about to be approved. The Supreme Court of Justice protected anyone who requested a new birth certificate after gender reassignment; Federal District policies accorded similar respect to such individuals. Registered cohabitation of same-sex couples was allowed by law; 96 per cent of those couples were registered in the Federal District. The amended civil code of the Federal District established that same-sex couples could marry and adopt children. The Supreme Court of Justice had denied constitutional appeals to the amendment but was reviewing its decision following an action by the Office of the Attorney General.

17. All homicides were investigated by the Public Prosecutor's Office, including hate crimes. The Federal District was establishing a prosecutor's office to investigate crimes related to homophobia, pursuant to Agreement A/02 2010. The State would follow up the Committee's concluding observations on the fifth periodic report, just as it had followed up the recommendations emanating from the Universal Periodic Review, through its Commission on Government Policy on Human Rights. A subcommittee of the Commission was developing a national human rights education programme to promote and defend human rights and disseminate international human rights treaties, to begin in mid-2010.

18. **Ms. de la Madrid** (Mexico) said that the number of torture cases did not reflect lack of will or of the ability to apply the principle of prevention of torture. The Government's commitment was exemplified by the National Human Rights Programme 2008-2012, which included a database of torture cases to detect tendencies and behaviour patterns. The Federal District and the 31 federative entities had offered training on the Specialized Medical-Psychological Opinion for Cases of Possible Torture and/or Maltreatment in public ministries, public safety departments, and all public prosecutors' offices. Thirteen prosecutor's offices had pledged to abide by the Istanbul Protocol and/or the Specialized Medical-Psychological Opinion for Cases of Possible Torture and/or Maltreatment and had created legislation on the matter.

19. The Office of the Attorney General of the Republic had issued 172 decisions from September 2003 to December 2009, and had found torture in 34 cases, including nine of physical torture and 11 of psychological torture, the remainder being a combination of the two. From 2003 to 2010, the Office of the Attorney General of the Republic had trained thousands of federal, health-care, and security personnel in the application of the Specialized Medical-Psychological Opinion for Cases of Possible Torture and/or Maltreatment. A second round of training was under way and plans were in place to provide training at seven more prosecutor's offices. Mechanisms had been established to record medical opinions of torture.

20. Turning to the issue of the burden of proof in torture cases, she said that the presumption of innocence had been incorporated in article 20 of the Constitution following reform of the penal justice and public security systems. The Federal Law to Prevent and Punish Torture was based on the Inter-American Convention to Prevent and Punish Torture and on the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Harmonization had been difficult but was proceeding apace.

21. The Office of the Attorney General of the Republic could become involved in cases of trafficking in persons or violence against women only if the cases were local and federal and involved crimes that had been incited, prepared or committed outside the country and had or were intended to have an influence in Mexican territory, or if the cases were connected to organized crime. The Office of the Attorney General of the Republic was drafting legislative amendments with a view to expanding its jurisdiction to cases that were of interest to society as a whole and in which individual interests impeded prosecution. While most crimes of trafficking in persons and violence against women fell under state jurisdiction, as of 16 February 2010, 389 complaints had been received at the federal level: 51 for trafficking (one involving a federal public servant) and 228 for violence against women. Eight cases of torture, four cases involving organized crime and 16 cases of violence against women had been adjudicated. As of October 2009, two cases of violence against women had been sentenced, one had been for sexual abuse; the remainder were under state jurisdiction.

22. Mexico was harmonizing the definition of enforced disappearance contained in its Federal Penal Code with international standards, in particular those set out in the Inter-American Convention on Forced Disappearance of Persons. The Office of the Attorney General of the Republic, by virtue of Agreement A/317/06, had closed the Office of the Special Prosecutor for Social and Political Movements of the Past and transferred pending cases to the General Coordinator for Investigations of the Attorney General's Office with no interruption in services. The General Coordinator was investigating 551 cases using advanced technology. Recommendations to reopen the Office of the Special Prosecutor for Social and Political Movements of the Past had not been heeded because cases were being handled by the General Coordinator.

23. The Government was committed to providing a safer environment for journalists and communicators. The National Development Plan 2008-2012 established freedom of expression as a core element of public policy. The Office of the Attorney General of the Republic was working with state authorities to investigate crimes against journalists and to punish perpetrators. The Government would appreciate specific information from the Committee in respect of the 14 cases it had referred to.

24. **Mr. Pérez** (Mexico) said that even in a state of emergency, rights could not be suspended without the agreement of both the executive and legislative branches (article 29 of the Constitution). The declaration of a state of emergency also had to be approved by Congress, the Government ministries and the Office of the Attorney General of the Republic. A

state of emergency had to be limited in time and the measures imposed had to be general in nature. The Law on National Security and its amendment included mechanisms to protect rights. Fundamental human rights had not been suspended in any state for the purpose of preventing crime or facilitating public order. Under article 89 of the Constitution, public security forces were permitted to call on the armed forces for assistance, and the Supreme Court of Justice had confirmed the legality of that provision. Thus, Congress had not changed anything in the Constitution or laws to grant the armed forces greater authority than before the state of emergency had been declared in Chihuahua. Intervention by the armed forces had been limited by the reform of article 57 of the Code of Military Justice. Furthermore, action had been taken to promote a culture of respect for human rights and to regulate behaviour in the armed forces.

25. The penitentiary system was in dire need of attention and therefore the State had begun short- and medium-term actions in 2008. Prisoners could participate in work and technical training programmes, and education, health and sport programmes to support their reintegration into society. The business sector had incentives to cooperate in reintegration programmes that would enable prisoners to earn income and provide reparation to victims. The goal was to create an economically viable and sustainable system. One of the most immediate problems was overcrowding in 231 out of 442 prisons. To address that situation, the Ministry of Public Security had proposed establishing a national information system to aid in the distribution of prisoners, creating new infrastructure with uniform and gender-sensitive federal and state human rights standards, and using alternative approaches such as supervised liberty and early release. Under social aid programmes, persons without sufficient income and those accused of non-serious crimes were exempt from bail.

26. Since every state had its own judicial system, there were huge asymmetries among facilities for women prisoners. Nationwide, 5 per cent of all prisoners were women, and there were 31 different penitentiary systems. Since the National Human Rights Commission recommended that women should not be detained in federal facilities, 263 state facilities housed women prisoners. Some had centres for women only and others were mixed. State facilities were addressing shortcomings in accordance with recommendations and reports citing various aspects of gender inequity. The Islas Marias facility housed 59 women who would soon be released in separate compounds with their families. Although the State was making every effort to align the treatment of children of women prisoners with international human rights standards, currently services varied according to the location of the facility.

27. **Mr. Chávez García** (Mexico) said that the federative entities were amending their criminal justice systems following the constitutional reform of 2008, which included the Code of Military Justice. The goal was to achieve the objectives of the National Human Rights Programme and to harmonize with international human rights treaties. The right of victims of military tribunals to have access to records was laid down in article 439 of the Code of Military Justice and article 20 of the Constitution.

28. **Mr. Thelin** said that every State had the right to combat organized crime using the strongest methods available in order to safeguard human rights. He noted the Government's efforts to counter violence against human rights defenders and its efforts to combat crimes of torture. He would appreciate clarification as to whether there was a constitutional provision or specific reform to the Federal Penal Code invalidating evidence or confessions elicited by force. The shift to the adversarial system should eliminate the need for early confession characteristic of the inquisitorial system.

29. **Ms. Chanet** said that entrusting the military with the administration of justice in civil matters was a violation of human rights. Since combating military enemies was not the same as maintaining public order, the military should consider offering separate training for personnel assigned to civil demonstrations and disruptions and personnel assigned to combat drug trafficking and organized crime. Neither the question about reservations to the Covenant nor the one regarding Mr. Herrera had been answered. While the delegation did not have to respond immediately, the Committee would welcome replies before it drafted its concluding observations. She would be willing to provide the information she had regarding Mr. Herrera.

30. **Sir Nigel Rodley** said that the rank of international human rights treaties in the Mexican hierarchy of laws was still unclear. He would appreciate details on how international obligations could prevail over national and state legislation. Did the State party understand that military justice should not be applied in criminal cases

involving human rights violations? Why did the military have its own justice system? The State party should be more specific about the burden of proof and describe any initiatives to make audio-visual recordings of interrogations. Lastly, it would be useful to know whether the restructuring of the Office of the Attorney General of the Republic meant that its tasks would no longer include medical forensics.

31. **Mr. Bouzid** requested additional information about the reported killing of innocent people at police and army checkpoints.

32. **Mr. Salvioli** said that before the Committee drafted its concluding observations, the delegation should indicate in writing whether international human rights norms were invoked more frequently by the courts as a result of human rights and gender training courses offered to judicial personnel. He was pleased that Mexico was committed to applying Official National Standard No. 46 on domestic violence in all state-level services for rape victims.

33. **Mr. Amor** requested clarification of the recent decision by the Supreme Court of Justice in that regard, including specific examples of when judges could decide to give precedence to international standards over national law.

34. **Mr. Gómez Sánchez** (Mexico) said that the right not to be tortured was absolute and incontestable. Confessions obtained under torture were never admissible. The burden of proof was not placed on the accused and judges had ways and means of ascertaining how confessions were obtained. While it was true that, in general, early confession was more valuable because it gave the accused less time to think, it was not absolute. There was no mechanism to control the application of the Constitution or of secondary law by a judge. When interested parties thought a court decision violated a fundamental right guaranteed by international treaties or the Constitution, they could appeal the decision and it could be qualified as null and void.

35. **Mr. Natarén Nandayapa** (Mexico) said that constitutional reform should result in the de jure and de facto elimination of the inquisitorial system. According to new regulations, which also applied to early confession, only evidence obtained publicly was acceptable. While the new model would not be applied until 2016, Mexico was committed to transforming the system in all federative entities as quickly as possible. The new system was already operating in six states and two more were scheduled to change within a year. The Government had created a specialized agency to offer technical assistance and funding during the process.

36. **Mr. López Portillo** (Mexico) said that Mexico was working to comply with all sentences of the Inter-American Court of Human Rights. The Ministry of National Defence was adapting article 57 of the Code of Military Justice to the accusatory system and attempting to make it more conducive to the execution of sentences. It was also exploring ways of harmonizing the Code with the judicial system. Since the reform process was not yet complete, the former system was still being applied in cases currently under investigation. The National Human Rights Commission, had processed over 2,000 complaints and issued recommendations on them, including sentences against military personnel. Other cases had been referred to the military justice system and the Ministry of National Defence.

37. **Mr. Castillo Sánchez** (Mexico) said that family judges had invoked the Convention on the Rights of the Child over national and local laws in a number of cases, and judges had applied precepts established in the Convention.

38. **Mr. Negrín Muñoz** (Mexico) said that the National Human Rights Programme was examining ways to expedite withdrawal of reservations to treaties, including the reservation to article 13 of the Covenant, and ratification of international instruments and optional protocols. The Inter-American Court of Human Rights had annulled the reservation to article 14 of the Inter-American Convention on Forced Disappearance of Persons.

39. **Mr. Guevara Bermúdez** (Mexico) said that the Government was aware of the disappearance of Mr. Herrera and had taken measures to investigate the crime. Meetings had been held with representatives of disappeared persons and their families, and the National Human Rights Commission, the Office of the Attorney General of the Republic, and the Ministry of National Defence had initiated investigations. On 4 March 2010, the Inter-American Court of Human Rights had ordered the Government to take three precautionary measures to protect the victims and still other measures to support their families. A working group was to meet at Ciudad Juárez to begin effective implementation of the measures.

40. **Mr. Alcántara Martínez** (Mexico) said that he would submit written information on the effect of human rights and gender-awareness training before the concluding observations were drafted. The recent decision of the Supreme Court of Justice had not modified the rank of international treaties in respect of the Constitution and national law. Since the decision was so recent, the text was not yet available. He recommended waiting until the text was available in order to fully understand the opinion of the judges. *Amparo* was a local procedure that could be challenged in terms of constitutionality and compatibility with international instruments.

41. **Mr. Ballados Villagómez** (Mexico) said that he would provide written details on rulings in respect of gender equity. The Electoral Tribunal had invoked the gender perspective in its decision on *Villareal* v. *the Party of the Democratic Revolution* (Partido de la Revolución Democrática, PRD), declaring that political parties had to be mindful of gender proportions in drawing up candidate lists. When the National Action Party (Partido Acción Nacional, PAN) had challenged proportional representation, it had been instructed to take gender equity into account.

42. **Ms. de la Madrid** (Mexico) said that when torture was suspected in a confession, the public prosecutor and the defendant's representative had to investigate it. State attorneys-general, the Ministry of Public Security and the armed forces were familiar with the Istanbul protocol and its definition of torture. The restructuring of the Office of the Attorney General of the Republic did not affect services regarded as technical tools for proving guilt or innocence. The Federal District, the state of Jalisco and the Office of the Attorney General of the Republic made audio-visual recordings of interrogations. The Ministry of National Defence did have a human rights programme; a description of it would be submitted in writing.

43. **Mr. Flores González** (Mexico) said that the Ministry of National Defence and the Ministry of Naval Affairs were aware of public policies on human rights and wished to work with institutions to help implement them. In collaboration with the National Human Rights Commission, both ministries had been strengthened to address all institutional matters of human rights, provide follow up to the National Human Rights Programme, and address deficiencies. Measures taken by the Ministry of Naval Affairs to regulate the legitimate use of force in accordance with United Nations instruments had been published in the *Official Gazette*; that information would be submitted in writing to the Committee.

44. **The Chair** invited the delegation to address questions 14 to 26 on the list of issues (CCPR/C/MEX/Q/5).

45. **Mr. Negrín Muñoz** (Mexico), replying to question 14 on the list of issues, said that constitutional reform had focused on human rights. Drawing attention to paragraph 152 of the replies to the list of issues (CCPR/C/MEX/Q/5/Add.1), he noted that nearly all articles of the Penal Code had been amended. Implementation of reform was gradual but ongoing. It included modifying the federal and military penal systems, as well as those of all 31 federative entities. Budgetary, publication and training issues also had to be considered. Forty per cent of federal entities had begun to implement reform and 25 states should have completed it by the end of 2012. A number of states conducted oral trials. Constitutional reform of the system should be concluded before 2016.

46. Turning to question 15 on *arraigo* (CCPR/C/MEX/Q/5), he said that the legal framework was regulated by the Federal Law against Organized Crime annexed to the fifth periodic report. Constitutional reform had made *arraigo* (short-term detention) an effective means of combating organized crime without violating international human rights standards. It was subject to judicial oversight, including measures to guarantee the prevention of torture. Persons under *arraigo* were guaranteed due process and had the option of filing a complaint; however, there had been no cases of torture of persons under *arraigo*.

47. Five reforms relating to the prosecution of military personnel (question 16 on the list of issues) were set out in paragraph 182 of the replies (CCPR/C/MEX/Q/5/Add.1). Careful attention was being paid to prison reform, including the construction of 15 new facilities, with three dedicated to adolescents. Efforts under way to regulate migrant holding centres (paras. 195 to 199 of the replies) included improving conditions at migrant holding centres, implementing geo-localization systems, and providing medical care to women and children. Article 33 of the Constitution had not been implemented for some time and the human rights of migrants and immigrants were respected.

The meeting rose at 1 p.m.

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* No summary record was prepared for the rest of the meeting.

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10-26442 (E)

Please recycle

The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of Mexico (*continued*) (CCPR/C/MEX/5; CCPR/C/MEX/Q/5 and Add.1)

1. *At the invitation of the Chair, the members of the delegation of Mexico took places at the Committee table.*

2. **The Chair** invited the members of the delegation to continue replying to the questions on the list of issues.

3. **Mr. Negrín Muñoz** (Mexico), responding to question 19 on the list of issues, said that the Public Prosecutor's Office for Investigation into Special Affairs had conducted a pretrial investigation into the complaint filed by Ms. María de la Luz Torrijos Villaseñor, legal counsel for the Human Rights Commission of the Federal District, against Mr. Hans Von Herrera for allegedly accessing the Commission's web server through illegal means. On 8 October 2009, following presentation of the evidence, it was decided not to institute criminal proceedings; the complainant, duly informed of the decision, had not filed objections. With regard to the alleged destruction of mail belonging to the non-governmental organization Servicios y Asesoría para la Paz, no complaint had been received.

4. Turning to question 20 on the list of issues, he said that while Mexican law did not recognize conscientious objection as grounds for exemption from military service, the Ministry of National Defence was authorized to excuse anyone who did not satisfy the conditions for military service, which covered physical, moral or social impediments.

5. On the issue of freedom of expression, he said that various alternatives to better protect journalists were under discussion, including strengthening the work of the Office of the Special Prosecutor for Crimes against Journalists and the National Human Rights Commission. A recent draft decree proposed to add a section entitled "crimes committed against freedom of expression" to the Federal Penal Code and to create a new criminal category for illegal acts aimed at hindering, limiting, endangering or interfering with journalism. The draft decree had been adopted by the Chamber of Deputies in April 2009 and was currently being considered by the Senate. In April 2007, the offences of calumny and defamation had been abolished in the Federal Penal Code. Currently, the Federal District and 13 of Mexico's 31 states had carried out reforms to bring their legislation into line with those amendments, and the process had been launched in a number of other states.

6. In respect of the National Human Rights Commission's recommendation No. 7, the Commission had implemented a programme to respond to attacks upon journalists and human rights defenders, which interacted directly with the communications sector and civil society to foster the creation of mechanisms for the protection of journalists' human rights. The programme had resulted in the opening of 492 cases thus far. The Congress of the Union, moreover, had approved a legal reform to guarantee the right of journalists not to reveal their sources. The functions of the Office of the Special Prosecutor for Crimes against Journalists, established in 2006, were to conduct investigations into cases involving crimes against Mexican journalists and crimes committed in Mexican territory against foreign journalists. The Office employed 24 civil servants and, as of July 2009, had dealt with 305 cases.

7. Responding to question 24 on the list of issues, he said that the trafficking and abuse of minors and child pornography were indeed treated as crimes in all the states (federative entities) of Mexico. Trafficking in persons and the prostitution of minors were criminalized under article 138 of the General Population Act and the Law to Prevent and Punish Trafficking in Persons, respectively. Between 2005 and 2008, the National Institute for Migration had identified 78 potential victims of human trafficking. A unit had been established exclusively to protect migrant children along the border and in migrant holding centres. The unit's employees assessed the need for international protection for refugees and victims of domestic violence and trafficking; notified consulates of situations involving nationals of their countries; and ensured that children were given medical care and accompanied them to their final destination if necessary. The "From the Streets to Life" programme sought to improve coordination between the public, private and social sectors working with street children and their families in order to contribute to medium- and long-term solutions. As of 2008, the programme, which was run by state committees, had

provided care to 23,000 street children and funding to 76 civil society organizations; it had also granted 1,814 scholarships and financed targeted projects for some 20,000 beneficiaries.

8. A number of initiatives were under way to promote political participation by indigenous peoples. The constitutional reform establishing the rights of indigenous peoples in 2001 had led to similar changes in local legislation. At the federal level, the National Programme of Action for the Development of Indigenous Peoples carried out activities to boost the involvement of indigenous communities in their own development and to assist them in learning about and exercising their rights.

9. Since submitting its fourth periodic report, Mexico had taken several significant steps in respect of the international human rights system, including establishing the National Human Rights Commission, recognizing the competence of the Inter-American Court of Human Rights to settle disputes, and extending an open invitation to human rights mechanisms and special procedures to visit Mexico.

10. Human rights information was regularly circulated among a network of institutions, including the Office of the High Commissioner for Human Rights in Mexico, the National Human Rights Commission, independent state-run human rights bodies and universities that offered programmes specializing in international human rights standards. Furthermore, the Covenant was regularly invoked by the judiciary in Mexico in handing down decisions. The Government itself circulated information about the Covenant through various means; in that connection, he highlighted the fact that no fewer than 24 institutions had contributed to the periodic report under consideration. The report had been presented and distributed at the July 2008 session of the Commission on Government Policy on Human Rights, which enjoyed the participation of representatives of Government institutions and civil society alike.

11. **Sir Nigel Rodley** said that it was important to ensure that the State party's commitment to comply with its obligations under the Covenant led to the protection of human rights in practice. Despite the range of measures taken to prevent torture, such abuse still occurred; it was difficult to understand why Mexico had not acted on the recommendations issued by international bodies such as the Committee against Torture. Moreover, the answer to his previous question on the burden of proof had been less than encouraging: he wished to know whether the burden was in fact on the authorities to show that a confession had been made freely, but the reporting State had merely indicated that judges could exercise discretion in determining how confessions had been obtained.

12. On the issue of *arraigo*, he would like to know whether the State party had put in place safeguards to ensure the rights of detainees, particularly since individuals were not normally brought before a judge prior to the issuance of an *arraigo* order (CCPR/C/MEX/5, para. 327). The delegation should also clarify whether a person could indeed be detained by the military for up to five days before an *arraigo* order was even sought, as indicated in reports received by the Committee. He would appreciate clarification on the nature of evidence needed by a judge to issue an *arraigo* order, as it had been suggested that the mere assertion of an anonymous denunciation in respect of an individual was sufficient. He enquired as to whether detainees were always held in the Federal Investigations Centre referred to in Mexico's written replies to the list of issues, or whether they were sometimes held in informal locations, such as hotels or military barracks. If the latter was not standard practice, it would be interesting to learn whether the State party was aware of cases in which that had allegedly happened. Additional information would also be appreciated regarding cases of torture related to the *arraigo* process that had been referred to the Inter-American Commission on Human Rights and that had involved police officers in Tijuana.

13. Noting that Mexico currently ranked sixth in the world in terms of the rate of incarceration, with particularly high percentages of women prisoners, he enquired about measures to successfully address the problem of overcrowding in order to guarantee the rights of persons deprived of their liberty.

14. **Mr. Salvioli** said that he would welcome additional information on individuals' enjoyment of due process, including access to legal counsel, during deportation hearings under the draft decree providing for various amendments to the National Constitution in the area of human rights. Regarding the significant number of journalists who had been subjected to intimidation tactics, it would be useful to learn whether anyone had been convicted of such crimes. He would also like to know how Mexico planned to bring state

legislation into line with federal legislation abolishing the offence of defamation. While commending the State party for its planned reforms to protect the rights of indigenous peoples, he wondered which reforms had been actively implemented thus far. It would be interesting to learn, moreover, whether Mexico planned to establish the right of consultation as a basic right of indigenous peoples.

15. **Mr. Rivas Posada** thanked the delegation for the additional information it had provided in respect of question 19 on the list of issues, noting that the Committee's primary concern had been to ascertain whether the Mexican Government was familiar with the complaints in question.

16. With regard to compulsory military service, he said that while conscientious objection was not explicitly referred to in the Covenant, the Committee's jurisprudence was consistent in interpreting article 18 to mean that the basic right to freedom of conscience should be extended to conscientious objection as grounds for exemption from military service. Therefore, the State party, which admitted that such grounds were not provided for under its law, was not in full compliance with its obligations under the Covenant. The fact that the Ministry of National Defence could, at its discretion, exempt some individuals from service for religious, moral or social reasons, was not sufficient; the right to conscientious objection must be specifically recognized by law. Noting that the current trend in the international community was to recognize the right to conscientious objection by offering alternatives to military service, he stressed that non-military community service must not be punitive, as that, too, would be contrary to the Covenant's aims and objectives.

17. **Ms. Chanet** echoed the concerns expressed regarding the State party's failure to recognize the right to conscientious objection. Moreover, its assertion that flexibility in completing military service could be granted especially in respect of students seemed discriminatory. She hoped that legislation would be adopted to fully recognize the right to conscientious objection for all.

18. With regard to freedom of expression, she asked whether the legislative amendments adopted at the federal level were also in force in the federative entities. It would also be useful to learn whether honour killings continued to occur. If defamation was no longer considered an offence under the Federal Penal Code, why did it continue to be listed as a crime in Mexico's written reply to question 22 on the list of issues (CCPR/C/MEX/Q/5/A, para. 244)? The situation of human rights defenders was of great concern to the Committee. As programmes aimed at merely reducing the risk of being attacked had proved insufficient, the reporting State should instead consider personal protection measures, such as providing journalists with bodyguards. It was puzzling to read in Mexico's report that although the activities of the Office of the Special Prosecutor for Crimes against Journalists had intensified, very few of the serious complaints brought by journalists had led to the institution of criminal proceedings, much less to convictions. She would like to know what steps Mexico planned to take to deal more effectively with the issue of journalists' safety. Lastly, she would welcome details on the budget, the functions and the jurisdiction assigned to the Office of the Special Prosecutor for Crimes against Journalists.

19. **Ms. Motoc** said that according to information received by the Committee, defamation was still treated as a crime in 19 states; she would like to know how the federal Government of Mexico planned to ensure that state legislation adequately reflected the abolishment of that offence. Turning to the issue of indigenous peoples, she asked what measures had been taken to implement the United Nations Declaration on the Rights of Indigenous Peoples. It would be useful to learn whether projects involving land belonging to indigenous peoples required their free and informed consent. Additional information on the situation of indigenous peoples in prison and of indigenous children would also be welcome.

20. **Mr. Pérez Sánchez-Cerro** expressed concern that detainees were not guaranteed the right to defend themselves under the *arraigo* process: indeed, not only did an *arraigo* order impose detention before an investigation and not vice versa, but it could also be issued for up 80 days, without the accused necessarily being brought before the judge prior to issuance of the order, and entail solitary confinement. Given the potentially arbitrary nature of *arraigo*, it was considered incompatible with the Covenant; he therefore urged the reporting State to eliminate the practice. Turning to the issue of military justice, he stressed that violations of human rights committed by military personnel should always be heard by the ordinary, and not military, courts, as military crimes

should be limited to offences relating to the military function.

21. He reiterated the concerns expressed previously regarding the journalists whose recent murders had not been sufficiently investigated, as well as those regarding the continued treatment of defamation as an offence, which undoubtedly stymied freedom of expression. The reformed Federal Penal Code did not give the federal authorities the power to investigate crimes such as the murders of journalists, but rather left such responsibilities to state authorities; in fact, neither the federal nor the state authorities appeared to have the resources necessary to implement the law. It was nonetheless the responsibility of States parties to ensure implementation of the Covenant regardless of their administrative and legal structure; Mexico must therefore take steps to ensure the incorporation of federal law into state law.

22. **Mr. Gómez Sánchez** (Mexico) said that under no circumstances could a judge consider evidence that had been obtained through torture, nor could he accept testimony that had not been given in the presence of legal counsel, the public prosecutor or a judge. Reiterating that the burden of proof was not placed on the accused in cases of torture, he said that, in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), judges were authorized to take any steps necessary to ascertain the facts in allegations of torture.

23. Furthermore, under no circumstances were judges to issue *arraigo* orders solely on the basis of an anonymous denunciation. *Arraigo* was a preventive measure applied mainly in situations in which the accused was believed to pose a significant threat if allowed to remain free pending trial. Although an *arraigo* order could be issued in the absence of the accused, he or she had recourse to legal measures to have the order lifted. The evidence required by judges under the *arraigo* process was in no way arbitrary, as an order was issued only when sufficient proof was given that the accused was probably responsible for the crime.

24. The basic rights of detainees under the *arraigo* process were guaranteed by law: detainees were never held in hidden locations and were always ensured comfortable accommodation and access to medical professionals. They were never held incommunicado and could, at any time, request the lifting of the *arraigo* order or request an action for *amparo*. The obligations imposed on the Office of the Public Prosecutor in respect of detainees' rights reduced the risk of abuse to a minimum. If abuses did occur, steps were taken immediately to investigate the events and to take administrative and/or criminal sanctions against those individuals responsible.

25. **Mr. Pérez** (Mexico) said that the so-called "control points" or roadblocks were not used as detention centres; their main function was to prevent crime, especially arms and drug trafficking. Under the Constitution, the need for such measures must be demonstrated and, once adopted, they must be carried out within a stringent legal framework. The Supreme Court of Justice had ruled that control points did not violate the right to liberty of movement provided for under article 11 of the Constitution, because, among other things, they did not involve such restrictive measures as safe-conduct papers. Control point officers were required to comply with specific protocols; any abuse was subject to investigation by the National Human Rights Commission and the courts. In an effort to prevent human rights violations, the Government of Mexico had signed an agreement with the International Committee of the Red Cross to train control point officers in the use of force and firearms. Participation of the armed forces in the maintenance of public security was limited to combating organized crime. Ordinary crime and situations such as demonstrations were handled by the civilian police.

26. To address the issue of overcrowding in prisons, the Government of Mexico continued not only to build new establishments, but also to promote alternatives to serving full prison sentences, such as probation, conditional discharge and community service. Recognizing the importance of implementing strategies to prevent and combat crime, a number of ministries had developed initiatives as part of a comprehensive strategy launched under President Calderón. Foremost among such initiatives was a new police work model proposed by the Ministry of Public Security on the basis of scientific studies on crime, which promoted strict standards of professionalism and regular inspections throughout the careers of police officers.

27. **Mr. Durán Ortegón** (Mexico) said that a number of reforms on indigenous peoples' rights had already been adopted and implemented at the federal level. The

process of harmonizing federal, state and local laws was ongoing: 23 local constitutions contained provisions regarding the rights of indigenous peoples, of which 15, having been adopted after 2001, were in conformity with article 2 of the Constitution of Mexico, amended that same year. The Congress of the Union was planning to establish a committee on legislative harmonization and to organize a technical round table with the National Commission for the Development of Indigenous Communities.

28. Ensuring indigenous peoples' right to consultation at all levels of government was an established priority in Mexico. A number of initiatives had been launched, including a pilot project to assist indigenous communities with the development of projects on their land. Communities had consistently been consulted on projects through the National Commission for the Development of Indigenous Communities; furthermore, a Consultation of Indigenous Communities Act was being drafted that would ensure the rights of indigenous peoples at the highest level. The Government had taken steps to widely disseminate the United Nations Declaration on the Rights of Indigenous Peoples, including through the Indigenous Cultural Broadcasting System. More than 200 workshops had been held and a brochure on the Declaration had been published in 18 indigenous languages. Some 7,000 copies of the brochure had already been distributed to organizations involved in the programme to promote agreements in the area of justice and the National Commission for the Development of Indigenous Communities was working with the United Nations Development Programme to expand distribution.

29. Resources devoted to improving the situation of indigenous peoples in Mexico had seen a significant increase since President Calderón had assumed office and virtually all Government institutions had developed related programmes. The Ministry of Social Development had created a programme specifically for indigenous children which provided vocational training, scholarships, food assistance and health. Other major initiatives included the maintenance of indigenous boarding schools, a large number of which had been renovated recently; the operation of mobile medical clinics; and the construction of a hospital specializing in the use of alternative medicines. The Government promoted a development policy that took into account indigenous identity: rather than imposing a single model on communities, it allowed them to develop their own projects and merely provided the resources and guidance necessary to make them a reality.

30. **Mr. Chávez García** (Mexico) said that military service in Mexico had evolved significantly since its establishment in 1942 during the Second World War, from strictly military activities to primarily community service activities. While the right to conscientious objection was not recognized in Mexico, the law did establish exceptions for which individuals could be exempted from service. He reiterated the fact that to date there had not been a single case of conscientious objection; however, those individuals required to do service could always opt for purely community service.

31. **Mr. Guevara Bermúdez** (Mexico) said that freedom of expression was a basic requirement for effective rule of law and democracy. The Government of Mexico condemned all attacks against the life and integrity of journalists and was working towards establishing mechanisms to protect their rights more effectively. Mexico's federated structure made it difficult to ensure the adequate investigation of alleged crimes against journalists in all the states and the incorporation of federal amendments, such as the abolishment of defamation and calumny as crimes, into state legislation. That said, the Government recognized its obligations under the Covenant and would seek to convey the importance of such matters to the federative entities. On the issue of the draft decree on constitutional amendments regarding human rights, he said that while it would be premature to provide details, due process during deportation hearings would undoubtedly be guaranteed in the legislation.

32. **Ms. de la Madrid** said that if an individual undergoing the *arraigo* process claimed to have been tortured, the medical expert in the case was obliged to inform the Office of the Public Prosecutor, which in turn was bound by law to institute a separate hearing for the alleged torture case. The physicians and psychologists who had developed the training material on adapting the Istanbul Protocol to the national context in Mexico had expert qualifications, as they had been involved in the drafting of the Protocol itself. As for the cases of alleged torture by police officers in Tijuana referred to the Inter-American Commission on Human Rights, she said that a meeting would be held shortly regarding the implementation of preventive measures requested by the Commission.

33. In order for a crime to be referred to the Office of the Special Prosecutor for Crimes against Journalists, a number of conditions had to be met: the person against whom the crime was committed must be a qualified journalist; the crime must constitute a violation of the right to information or the freedom of press; and the crime must be defined as such under the Federal Penal Code. The Office of the Special Prosecutor for Crimes against Journalists was not competent to handle cases of organized crime and transferred any such cases to the Office of the Deputy Public Prosecutor for Investigation of Organization Crime. Nor did it prosecute criminal cases involving ordinary offences; however, the Public Prosecutor's Office closely monitored such cases and assisted with their investigation.

34. A number of proposals had been made in recent years to reform the legislation in order to expand the rather limited competence of the Office of the Special Prosecutor. In addition, efforts were under way to comply with recommendations made by the Inter-American Court of Human Rights and the principles set out by the Inter-American Commission on Human Rights for States on defending representatives of the press and to guarantee the effective enjoyment of the right to information, the freedom of expression and the freedom of the press. The Office of the Special Prosecutor had adopted measures to protect the personal safety of journalists whenever necessary and was working with civil society to develop a protocol for the protection of journalists at risk. Lastly, the Federal Law on Transparency and Access to Public Government Information, which provided public access to Government information, had been adopted in 2002.

35. **Sir Nigel Rodley** said that he would appreciate additional information on the nature of the evidence required to sustain an *arraigo* order, which was presumably less than that necessary to sustain a formal criminal charge. While it was reassuring to receive confirmation that detainees were not held in secret detention, further information on the types of informal locations they could be held in, including military barracks, if applicable, would be appreciated. As for alleged abuses during the *arraigo* process, details on cases of abuse in which those responsible had in fact been tried and punished would be welcome. In particular, he would be grateful for a response to his query about the holding of individuals for up to five days before an *arraigo* order was sought. Assuming that such action constituted illegal detention, it would be useful to learn what measures had been taken against those responsible. In that connection, he wondered how civilian judges were able to ensure that appropriate sanctions were taken against military personnel who committed such abuses, in light of the special military jurisdiction.

36. **Ms. Motoc** requested additional information on the consultation of indigenous people in respect of development projects on their land. In particular, it would be useful to learn whether any opposition from the indigenous communities was taken into account and whether consensus was needed to proceed with the project.

37. **Mr. Lallah** said that the fact that Mexico had developed a number of programmes relating to the risks facing journalists and human rights defenders did not necessarily allay the Committee's concern for their safety, as such persons continued to be killed on a regular basis. He therefore wished to know what specific measures, whether part of or separate from the previously described programmes, were being implemented to ensure their safety.

38. With regard to the community service activities of the military, the State party should indicate whether such fusion of military and civilian authorities was compatible with articles 2 and 14 of the Covenant. Was the military under military or civilian jurisdiction when carrying out non-military activities? He would like to know whether civilian victims could seek remedy if the military, while carrying out such activities, committed human rights violations, and if so, whether it was from the military or the civilian courts. He would also welcome additional information on whether the procedure for appointing military judges differed from that of appointing civilian judges, and on how their independence from the appointing authorities was ensured. He hoped that, in its subsequent report, the reporting State would provide more specific information on the division between military and civilian in relation to articles 2 and 14 of the Covenant.

39. **Mr. Gómez Sánchez** (Mexico) said that judges were extremely demanding with regard to the evidence required for an *arraigo* order. The evidence must show with a very high level of certainty that the accused was probably responsible for the crime in question. While the vast majority of detainees under the *arraigo*

process were held in the Federal Investigations Centre located in the Federal District, they could, for reasons relating to their health or safety, be held in other establishments, such as hospitals. Ensuring detainees' human rights was a major priority; in the event of an alleged violation of those rights, the detainee's complaint was closely investigated, as was the compliance of the Public Prosecutor's Office with all the conditions necessary to ensure the protection of the detainee's rights. He would supply in written form statistics on persons having undergone the *arraigo* process so that the Committee might have a more comprehensive understanding of the practice and, it was hoped, its effectiveness.

40. **Ms. de la Madrid** (Mexico) said that in the few cases in which a detainee under an *arraigo* order was held in a facility other than the Federal Investigations Centre, it was usually for a short time, pending his or her transfer to the Centre. In those cases, the security and logistics of the facility must not be inferior to those of the Federal Investigations Centre, conditions that were closely examined by the judge issuing the *arraigo* order. The personnel who supervised the detainees at the Centre were held to the strictest standards, including with regard to the protection of human rights, and the Centre itself boasted cutting-edge technology and facilities which guaranteed high-level security and the safety of the detainees.

41. **Mr. Durán Ortegón** (Mexico) said that the National Commission for the Development of Indigenous Communities required that communities be consulted before an outsider could proceed with any project on their land. However, because that was not always the case for other institutions, the Commission had actively promoted the drafting of the previously mentioned Consultation of Indigenous Communities Act. The Act proposed to set up a regulatory framework that respected the actions and rights of indigenous communities and to establish a policy of consultation of those communities.

42. **Mr. Chávez García** (Mexico) said that compulsory military service, in which community service was used to cultivate certain values in youth, should be distinguished from voluntary or professional military service that prepared adults for war situations. The individuals in the latter group were subject to special military jurisdiction, whereas the former were not. When professional soldiers committed crimes, they were subject to investigation, trial and sentence by the military courts. The Minister of National Defence was responsible for appointing military judges. Their independence was ensured by a number of mechanisms under the Code of Military Justice, which characterized arbitrary or politically motivated decisions as serious offences.

43. **Mr. Guevara Bermúdez** (Mexico), while recognizing that the mechanisms currently in place to protect journalists and human rights defenders were imperfect, said that when the Government became aware of a threat to a journalist's life or well-being, the police were requested to assist with measures to ensure the journalist's protection. Possible measures included investigations, the use of surveillance cameras and walkie-talkies; the journalist decided together with the police which measures were most appropriate. Some 25 such measures were currently being implemented in Mexico.

The discussion covered in the summary record ended at 5.45 p.m.